



GAIL FARBER, Director

COUNTY OF LOS ANGELES DEPARTMENT OF PUBLIC WORKS

"To Enrich Lives Through Effective and Caring Service"

900 SOUTH FREMONT AVENUE
ALHAMBRA, CALIFORNIA 91803-1331

<http://dpw.lacounty.gov>

ADDRESS ALL CORRESPONDENCE TO:
P.O. BOX 1460
ALHAMBRA, CALIFORNIA 91802-1460

June 04, 2014

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Dear Supervisors:

ADOPTED

BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

44 June 4, 2014

Sachi A. Hamai
SACHI A. HAMAI
EXECUTIVE OFFICER

**AUTHORIZATION FOR THE COUNTY OF LOS ANGELES AND THE LOS ANGELES COUNTY
FLOOD CONTROL DISTRICT TO ENTER INTO A MEMORANDUM OF UNDERSTANDING FOR
DEVELOPMENT OF A NONSTRUCTURAL CONTROLS PLAN, A COMPLIANCE PLAN, AND A
POLLUTION PREVENTION PLAN FOR AREA OF SPECIAL BIOLOGICAL SIGNIFICANCE 24
(SUPERVISORIAL DISTRICT 3)
(3 VOTES)**

SUBJECT

This action is to authorize the Director of Public Works and Chief Engineer of the Los Angeles County Flood Control District or her designee to execute, on behalf of the County of Los Angeles and Los Angeles County Flood Control District, respectively, a cost-sharing Memorandum of Understanding, including subsequent amendments, between the two agencies and the City of Malibu for the development of a Nonstructural Controls Plan, a Compliance Plan, and a Pollution Prevention Plan for Area of Special Biological Significance 24. Development of the aforementioned plans enables compliance with the Special Protections adopted with the General Exception to the California Ocean Plan for Selected Discharges into Areas of Special Biological Significance.

IT IS RECOMMENDED THAT THE BOARD:

1. Find that the proposed action is exempt from the California Environmental Quality Act for the reasons stated in this letter and in the record of the project.
2. Approve and authorize the Director of Public Works or her designee to execute, on behalf of the County of Los Angeles, a cost-sharing Memorandum of Understanding, including subsequent amendments with the Los Angeles County Flood Control District and the City of Malibu. The County share of the plan development costs shall not exceed \$316,894.

IT IS ALSO RECOMMENDED THAT THE BOARD ACTING AS THE GOVERNING BODY OF THE LOS ANGELES COUNTY FLOOD CONTROL DISTRICT:

1. Find that the proposed action is exempt from the California Environmental Quality Act for the reasons stated in this letter and in the record of the project.
2. Approve and authorize the Chief Engineer of the Los Angeles County Flood Control District or her designee to execute, on behalf of the Los Angeles County Flood Control District, the subject cost-sharing Memorandum of Understanding, including subsequent amendments with the County of Los Angeles and the City of Malibu. The Los Angeles County Flood Control District's share of the plan development cost will not exceed \$55,189.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

In 1983 the California Ocean Plan prohibited waste discharges into coastal areas designated as Areas of Special Biological Significance (ASBS). Prohibited discharges include both stormwater and nonstormwater runoff. The County of Los Angeles (County), Los Angeles County Flood Control District (LACFCD), City of Malibu (City), and other agencies have jurisdiction or responsibility over land or infrastructure that discharges into ASBS 24, which extends from Laguna Point in the County of Ventura to Latigo Point in the County.

In March and June 2012 the California State Water Resources Control Board adopted Resolutions 2012-0012 and 2012-0031, respectively, which approved a General Exception to the Ocean Plan for selected discharges into the ASBS. The Special Protections that were adopted with the General Exception require dischargers to implement nonstructural controls and prepare a Compliance Plan for point source discharges and a Pollution Prevention Plan for nonpoint source discharges.

The County, LACFCD, and City have agreed to collaborate in the development of a Nonstructural Controls Plan, which will guide the implementation of nonstructural controls. The agencies have also agreed to collaborate in the development of the Compliance Plan and Pollution Prevention Plan to be submitted to the State Water Board.

The Memorandum of Understanding (MOU) will establish the County as Contract Administrator for the development of a Nonstructural Controls Plan, Compliance Plan, and Pollution Prevention Plan for ASBS 24. As Contract Administrator, the County will pay the consultant's invoices on behalf of the County, LACFCD, and City and invoice the LACFCD and City for their share of the costs.

Implementation of Strategic Plan Goals

The Countywide Strategic Plan directs the provision of Operational Effectiveness (Goal 1). The recommended actions support the development of a cooperative partnership with local agencies to provide a public service in an effective and efficient manner.

FISCAL IMPACT/FINANCING

As shown on Exhibit A of the MOU, the maximum consultant contract cost for developing the subject plans is \$501,716. For administering the contract, the County will charge a 10 percent administration fee, bringing the total maximum plan development cost to \$551,888. As Contract Administrator, the County will pay the consultant invoices on behalf of the County, City, and LACFCD. The County will subsequently invoice the City and LACFCD for their shares of the consultant's invoices and the

previously discussed administration fee.

To fund the County and City's share of the plan development cost, \$58,257 was allocated and spent from the Fiscal Year 2012-13 Unincorporated Areas Stormwater Program Budget, which is part of the Public Works' General Fund Budget. An additional \$80,432 to fund the County and City's share of the plan development cost is included in the Public Works' General Fund Fiscal Year 2013-14 Budget. The City will subsequently reimburse the County for their share of the costs after they are invoiced. The remaining balance of the County's share to complete the plans, up to the maximum total of \$316,894, for subsequent fiscal years will be requested through the annual budget process if needed.

The LACFCD's cost to collaborate in the development of the subject plans will not exceed \$55,189. This not to exceed cost includes the LACFCD's share of the contract costs and contract administration fees. Funds were allocated in the Flood Fund Fiscal Year 2012-13 Budget and are available in the Fiscal Year 2013-14 Budget to cover the specified cost to the LACFCD.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

The County will serve as Contract Administrator for the development of the plans and, in this role, will obtain payments from the LACFCD and City for their shares of the cost of the consultant contract and contract administration fees.

The cost-sharing MOU entered into by the County, LACFCD, and City will be substantially similar to the enclosed MOU, which has been reviewed and approved as to form by County Counsel.

ENVIRONMENTAL DOCUMENTATION

The proposed cost-sharing MOU is categorically exempt from the California Environmental Quality Act (CEQA). The MOU sets forth how the County, LACFCD, and City will fund the preparation of a Nonstructural Controls Plan, a Compliance Plan, and a Pollution Prevention Plan for ASBS 24. These plans will be developed by a consultant paid pursuant to the cost-sharing MOU. The MOU to fund the consultant's activities is within a class of projects that have been determined not to have a significant effect on the environment in that it meets the criteria of Section 15306 of the CEQA Guidelines and Class 6 of the County's Environmental Document Reporting Procedures and Guidelines, Appendix G, dealing with data collection, research, experimental management, and resource evaluation activities that will not result in a serious or major disturbance to an environmental resource. These activities are part of studies leading to possible future actions that neither the County nor the LACFCD has approved, adopted, or funded.

During the development of the plans, the consultant may engage in preliminary soils analysis and testing, which would include drilling of borings. This type of activity is within a class of projects that have been determined not to have a significant effect on the environment in that they meet the criteria of Section 15304 of the CEQA Guidelines, dealing with minor alterations to land that do not involve the removal of healthy, mature, and scenic trees, and Class 4(k) of the County's Environmental Document Reporting Procedures and Guidelines, Appendix G. These activities will not occur in a sensitive environment, and there are no cumulative impacts, unusual circumstances, or other limiting factors that would make these exemptions inapplicable, based on the project records.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

There will be no negative impact on current services.

CONCLUSION

Please return one adopted copy of this letter to the Chief Executive Office, Community and Municipal Services Cluster, and one copy to Public Works, Watershed Management Division.

Respectfully submitted,

A handwritten signature in black ink that reads "Gail Farber". The script is cursive and fluid.

GAIL FARBER

Director

GF:GH:ba

Enclosures

c: Chief Executive Office (Rita Robinson)
County Counsel
Executive Office

**MEMORANDUM OF UNDERSTANDING
BETWEEN
COUNTY OF LOS ANGELES,
LOS ANGELES COUNTY FLOOD CONTROL DISTRICT,
AND CITY OF MALIBU**

**REGARDING THE
DEVELOPMENT OF A NONSTRUCTURAL CONTROLS PLAN,
COMPLIANCE PLAN, AND POLLUTION PREVENTION PLAN FOR
AREA OF SPECIAL BIOLOGICAL SIGNIFICANCE 24**

This Memorandum of Understanding (MOU) is made and entered into as of the date of the last signature set forth below by and between the County of Los Angeles (COUNTY), a political subdivision of the State of California; the Los Angeles County Flood Control District (LACFCD), a body corporate and politic; and the City of Malibu (CITY), a municipal corporation. Collectively, these entities shall be referred to hereinafter as PARTIES or individually as PARTY.

WITNESSETH

WHEREAS, in 2004 under the California Ocean Plan, the State Water Resources Control Board (State Water Board) notified the PARTIES to cease stormwater and nonpoint source water discharges into the Laguna Point to Latigo Point Area of Special Biological Significance (ASBS), also known as ASBS 24, or to request an exception from the California Ocean Plan's ASBS waste discharge prohibition; and

WHEREAS, the PARTIES subsequently requested the State Water Board to grant them exceptions from the California Ocean Plan's ASBS waste discharge prohibition; and

WHEREAS, in 2012 the State Water Board adopted Resolution Nos. 2012-0012 and 2012-0031, which approved a General Exception to the California Ocean Plan for selected discharges into the ASBS, hereinafter referred to as General Exception; and

WHEREAS, the Special Conditions adopted with the General Exception require dischargers covered by the General Exception to implement any nonstructural controls that are necessary to comply with the Special Conditions in the General Exception and to prepare and submit to the State Water Board a Compliance Plan for permitted point source discharges of stormwater and a Pollution Prevention Plan for nonpoint sources discharges; and

WHEREAS, the PARTIES have agreed to collaborate in the development of a Nonstructural Controls Plan, which will guide the implementation of nonstructural controls but is not required to be submitted to the State Water Board, and to collaborate in the development of the Compliance Plan and Pollution Prevention Plan to be submitted to the State Water Board, hereinafter collectively referred to as PLANS; and

WHEREAS, the PARTIES have determined that hiring a consultant to prepare the PLANS will be beneficial to the PARTIES; and

WHEREAS, the PARTIES collaboratively prepared a scope of work to retain a consultant to assist the PARTIES with the preparation of the PLANS; and

WHEREAS, the COUNTY, on behalf of the PARTIES, solicited a proposal and awarded a consultant contract (hereinafter referred to as CONTRACT) to develop the PLANS to one of the COUNTY'S as-needed consultants, specifically Weston Solutions, Inc. (hereinafter referred to as CONSULTANT); and

WHEREAS, the cost of the CONSULTANT CONTRACT for the preparation of the PLANS is Five Hundred One Thousand Seven Hundred Sixteen and 00/100 Dollars (\$501,716.00), of which One Hundred Forty-eight Thousand Nine Hundred Seventy and 00/100 Dollars (\$148,970.00) is for non-optional tasks and Three Hundred Fifty-two Thousand Seven Hundred Forty-six and 00/100 Dollars (\$352,746.00) is for optional tasks; and

WHEREAS, optional and non-optional tasks are identified in the Cost Proposal from CONSULTANT, dated May 28, 2013, incorporated herein as Exhibit C, and as may be amended from time to time; and

WHEREAS, the PARTIES will provide funding in accordance with the cost allocation as shown in Exhibit A; and

WHEREAS, the PARTIES agree that each shall assume full and independent responsibility for ensuring its own compliance with the Special Conditions adopted with the General Exception despite the collaborative approach of this MOU. With the sole exception of the submission of the Compliance Plan and Pollution Prevent Plan to the State Water Board, nothing in this MOU is intended to govern or address the compliance of any Party with the Special Conditions adopted with the General Exception.

NOW, THEREFORE, in consideration of the mutual benefits to be derived by the PARTIES, and of the promises herein contained, it is hereby agreed as follows:

- (1) Recitals: The recitals set forth above are fully incorporated as part of this MOU.
- (2) Purpose: The purpose of this MOU is to cooperatively fund the preparation of the PLANS and to facilitate submittal of the Compliance Plan and Pollution Prevention Plan to the State Water Board.
- (3) Voluntary: This MOU is voluntarily entered into for the purpose of preparing the PLANS and submitting the Compliance Plan and Pollution Prevention Plan to the State Water Board.

- (4) Terms: This MOU shall become effective on the latest date of execution by a PARTY and shall remain in effect until (i) the State Water Board's final approval date of the last outstanding portion of the Compliance Plan and Pollution Prevention Plan, (ii) the COUNTY has provided the PARTIES with an accounting as set forth in paragraph (5)i, and (iii) the PARTIES have paid all outstanding invoices.
- (5) The COUNTY shall provide services and performance as follows:
- a. The COUNTY will administer the CONSULTANT CONTRACT. For this service, the LACFCD and CITY will pay the COUNTY a CONTRACT administration fee equivalent to 10 percent (10%) of the respective PARTY'S contribution toward the CONSULTANT CONTRACT.
 - b. At the onset of the CONSULTANT CONTRACT, the COUNTY shall authorize the CONSULTANT to work on the non-optional tasks of the CONSULTANT CONTRACT.
 - c. The COUNTY shall consult with the other PARTIES and obtain written authorization by each of the PARTIES funding the optional task(s) prior to authorizing the CONSULTANT to work on any optional task(s) of the CONSULTANT CONTRACT.
 - d. Upon execution of this MOU, the COUNTY shall invoice the PARTIES for their share of the cost to complete the non-optional tasks, as shown in Exhibit A.
 - e. The COUNTY shall invoice the PARTIES for their share of the cost to complete optional tasks once said authorization(s) is given to the CONSULTANT.
 - f. The COUNTY shall utilize the funds deposited by the PARTIES only for the CONSULTANT CONTRACT and CONTRACT administration fee.
 - g. The COUNTY shall provide the PARTIES with a hardcopy and/or electronic copy of all CONSULTANT CONTRACT deliverables in a timely manner and obtain a license from the CONSULTANT, in favor of the PARTIES, to reproduce those deliverables as necessary for the use by the PARTIES.
 - h. The COUNTY shall not submit or instruct the CONSULTANT to submit the Compliance Plan and Pollution Prevention Plan to the State Water Board on behalf of the PARTIES unless and until said plans have been approved in writing for submittal by all PARTIES to this MOU, for which the approval shall not be unreasonably withheld.

- i. The COUNTY shall furnish the PARTIES a final accounting of the cost of the preparation of the PLANS within sixty (60) calendar days after the completion of the PLANS or other later date as may be determined by the COUNTY and agreed by the PARTIES.

(6) THE PARTIES FURTHER AGREE:

- a. To make a full-faith effort to cooperate with one another to achieve the purposes of this MOU by providing information, reviewing deliverables, and informing their respective administrators, agency heads, and/or governing bodies about matters associated with the preparation of the PLANS, as appropriate, in a timely manner.
- b. To fund the cost of the preparation of the PLANS and to pay the COUNTY for the preparation of the PLANS within sixty (60) days of receiving an invoice. Funding shall be contributed as specified in Exhibit A.
- c. To grant reasonable access rights and entry to the COUNTY and the CONSULTANT during the terms of this MOU to any PARTY'S storm drains, channels, catch basins, and similar properties (collectively, FACILITIES) to achieve the purposes of this MOU, provided, however, that prior to entering any PARTY'S FACILITIES, the COUNTY or the CONSULTANT shall secure a permit of entry from the applicable PARTY.
- d. Each PARTY shall indemnify, defend, and hold harmless each other PARTY, including its special districts, elected and appointed officers, employees, and agents from and against any and all liability, including but not limited to demands, claims, actions, fees, costs, and expenses (including attorney's and expert witness fees), arising from or connected with the respective acts of each PARTY arising from or related to this MOU, provided, however, that no PARTY shall indemnify another PARTY for that PARTY'S own negligence or willful misconduct.
- e. In light of the provisions of Section 895.2 of the Government Code of the State of California imposing certain tort liability jointly upon public entities solely by reason of such entities being parties to an agreement (as defined in Section 895 of said Code), each of the PARTIES hereto, pursuant to the authorization contained in Sections 895.4 and 895.6 of said Code, shall assume the full liability imposed upon it or any of its officers, agents, or employees by law for injury caused by any act or omission occurring in the performance of this MOU to the same extent that such liability would be imposed in the absence of Section 895.2 of said Code. To achieve the above-stated purpose, each PARTY indemnifies, defends, and holds harmless each other PARTY for any liability, cost, or expense that may be imposed upon such other PARTY solely by virtue of said Section 895.2. The

provisions of Section 2778 of the California Civil Code are made a part hereof as if incorporated herein.

- f. The PARTIES are, and shall at all times remain as to each other, wholly independent entities. No PARTY to this MOU shall have power to incur any debt, obligation, or liability on behalf of any other PARTY unless expressly provided to the contrary by this MOU. No employee, agent, or officer of a PARTY shall be deemed for any purpose whatsoever to be an agent, employee, or officer of another PARTY.
- g. Any notices, bills, invoices, or reports relating to this MOU and any request, demand, statement, or other communication required or permitted hereunder shall be in writing and shall be delivered to the representatives of the PARTIES at the addresses set forth in Exhibit B. Parties shall promptly notify each other of any change of contact information, including personnel changes, provided in Exhibit B. Written notice shall include notice delivered via email or fax. A notice shall be deemed to have been received on (a) the date of delivery, if delivered by hand during regular business hours, or by confirmed facsimile or by email; or (b) on the third (3) business day following mailing by registered or certified mail (return receipt requested) to the addresses set forth in Exhibit B.
- h. This MOU shall be binding upon and shall be to the benefit of the respective successors, heirs, and assigns of each PARTY, provided, however, no PARTY may assign its respective rights or obligations under this MOU without the prior written consent of the other PARTIES.
- i. Each PARTY shall have no financial obligation to the other PARTIES of this MOU, except as herein expressly provided.
- j. All PARTIES have been represented by counsel in the preparation and negotiation of this MOU. Accordingly, this MOU shall be construed according to its fair language. Any ambiguities shall be resolved in a collaborative manner by the PARTIES and shall be rectified by amending this MOU as described in paragraph (6) m.
- k. This MOU is governed by, interpreted under, and construed and enforced in accordance with the laws of the State of California. In the event of litigation between the PARTIES, venue in the state trial courts shall lie exclusively in the County.
- l. If any provision of this MOU shall be determined by any court to be invalid, illegal, or unenforceable to any extent, the remainder of this MOU shall not be affected, and this MOU shall be construed as if the invalid, illegal, or unenforceable provision had never been contained in this MOU.

- m. The terms and provisions of this MOU may not be amended, modified, or waived, except by an instrument in writing signed by all PARTIES.
- n. Each of the persons signing below on behalf of a PARTY represents and warrants that he or she is authorized to sign this MOU on behalf of such PARTY.
- o. This MOU may be executed in counterparts, each of which shall be an original, but all of which taken together shall constitute one and the same instrument, provided, however, that such counterparts shall have been delivered to all PARTIES to this MOU.

IN WITNESS WHEREOF, the PARTIES hereto have caused this MOU to be executed by their duly authorized representatives and affixed as of the date of signature of the PARTIES:

COUNTY OF LOS ANGELES

By _____
GAIL FARBER
Director of Public Works

Date

APPROVED AS TO FORM:

JOHN F. KRATTLI
County Counsel

By _____
Associate

LOS ANGELES COUNTY FLOOD CONTROL DISTRICT

By _____
GAIL FARBER
Chief Engineer

Date

APPROVED AS TO FORM:

JOHN F. KRATTLI
County Counsel

By _____
Associate

CITY OF MALIBU

By _____
JIM THORSEN
City Manager

Date

ATTEST:

By _____
LISA POPE
City Clerk

APPROVED AS TO FORM:

By _____
CHRISTI HOGIN
City Attorney

Exhibit A

Funding Contributions for the Development of a Nonstructural Controls Plan, Compliance Plan, and Pollution Prevention Plan for ASBS 24

Plan Development Cost

Table 1. Plan Development Cost including CONTRACT Administration Fees

Type of Tasks	CONSULTANT CONTRACT Cost	CONTRACT Administration Fee	Total CONTRACT Cost
Non-optional Tasks	\$148,970	\$14,897	\$163,897
Optional Tasks	\$352,746	\$35,275	\$388,021
Total	\$501,716	\$50,172	\$551,888

Funding Contributions

The LACFCD will contribute 10 percent (10%) of the cost for the authorized tasks. The remainder of the CONSULTANT CONTRACT cost will be distributed between the COUNTY and the CITY based on the percentage of the combined land area for which each PARTY is responsible.

Table 2 details each PARTY'S non-optional task cost contributions, and Table 3 details each PARTY'S maximum optional task cost distribution, assuming that all optional tasks are authorized. Table 4 details each PARTY'S maximum funding contribution, again, assuming that all optional tasks are authorized.

Upon execution of this MOU, the COUNTY will invoice the PARTIES for their shares of the cost to complete the non-optional tasks. The COUNTY shall invoice the PARTIES for their shares of the cost to complete the optional tasks once the PARTIES have authorized said optional tasks and the CONSULTANT has been notified to proceed.

Table 2. Funding Contributions for Non-optional Tasks

PARTY	Land Area (Acres)	Percentage (%) of Combined Land Area	Contribution for Non-optional Tasks	CONTRACT Administration Fee	Total for Non- optional Tasks
LACFCD	N/A	N/A	\$14,897	\$1,490	\$16,387
COUNTY	11,839	63.8	\$85,539	\$8,554	\$94,093
CITY	6,708	36.2	\$48,534	\$4,853	\$53,387
Total	18,547	100.0	\$148,970	\$14,897	\$163,867

Table 3. Maximum Funding Contributions for Optional Tasks

PARTY	Land Area (Acres)	Percentage (%) of Combined Land Area	Contribution for Optional Tasks	CONTRACT Administration Fee	Total for Optional Tasks
LACFCD	N/A	N/A	\$35,275	\$3,527	\$38,802
COUNTY	11,839	63.8	\$202,546	\$20,255	\$222,801
CITY	6,708	36.2	\$114,925	\$11,493	\$126,418
Total	18,547	100.0	\$352,746	\$35,275	\$388,021

Table 4. Total Maximum Funding Contributions

PARTY	Total Maximum Funding Contribution
LACFCD	\$55,189
COUNTY	\$316,894
CITY	\$179,805
Total	\$551,888

EXHIBIT B

Responsible Agency Representatives for the Development of a Nonstructural Controls Plan, Compliance Plan, and Pollution Prevention Plan for ASBS 24

1. COUNTY:

PARTY Representative: Ms. Angela George
County of Los Angeles Department of Public Works
Watershed Management Division
900 South Fremont Avenue, 11th Floor
Alhambra, CA 91803
E-mail: ageorge@dpw.lacounty.gov
Phone: (626) 458-4325
Fax: (626) 457-1526

2. LACFCD:

PARTY Representative: Ms. Terri Grant
Los Angeles County Flood Control District
900 South Fremont Avenue, 11th Floor
Alhambra, CA 91803
E-mail: tgrant@dpw.lacounty.gov
Phone: (626) 458-4309
Fax: (626) 457-1526

3. CITY:

PARTY Representative: Ms. Jennifer Brown
City of Malibu
23825 Stuart Ranch Road
Malibu, CA 90265
E-mail: jbrown@malibucity.org
Phone: (310) 456-2489 x 275
Fax: (310) 456-3356

Exhibit C

**Cost Proposal for the Development of a
Nonstructural Control Plan, Compliance Plan, and
Pollution Prevention Plan for ASBS 24**

GC:jht

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